

**Statement of**

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**Before the**

**SUBCOMMITTEE ON COMMUNICATIONS**

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

**UNITED STATES SENATE**

**on**

**WIRELESS TELECOMMUNICATIONS BUREAU OVERSIGHT**

**May 13, 1998**

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for the opportunity to discuss the activities of the Wireless Telecommunications Bureau of the Federal Communications Commission. We in the Bureau are fortunate to regulate an industry that is one of the most dynamic within the field of telecommunications, one in which technological innovation is occurring rapidly, and service to consumers are expanding and prices dropping. We believe we have helped to foster these positive developments. My testimony highlights the Bureau's major accomplishments since the Bureau's creation less than four years ago, and presents some of the more significant initiatives on which the Bureau is currently focused. The testimony and appendices present a three-fold view of the Bureau and its work. First, is an overview of the Bureau as an organization. Second, are the Bureau's major policy issues. Finally, I identify proposals for additional legislation that would aid the Bureau and the Commission in promoting additional competition through wireless services.

#### **I. Bureau Overview**                      **Establishment and Functions of the Bureau**

The Wireless Telecommunications Bureau was established on December 1, 1994, when the FCC's Private Radio Bureau merged with the Mobile Services Division of the Common Carrier Bureau and with the Spectrum Auctions Task Force, which had been charged with implementing the requirements of the Budget Reconciliation Act of 1993. The Bureau performs the day-to-day licensing and policy work surrounding a wide range of wireless services, including cellular, Personal Communications Services (PCS), paging and messaging services, public safety communications, and other commercial and private radio services.

Since its creation only three and one-half years ago, the Wireless Bureau's activities have been influenced by many factors. There have been rapid changes in wireless technology and in the industries that manufacture equipment and provide wireless services. We have also seen a

variety of key legislative changes, particularly the Telecommunications Act of 1996 and the Balanced Budget Amendments of 1997. As a result of these developments, there has been an explosion in the number of wireless services consumers. To meet these challenges, the Bureau has utilized its human resources in an effort to maximize the efficiency of our operations and the quality of our customer service. At its creation in December 1994, the Bureau's approved staffing ceiling was 308.5 Full-Time Equivalent (FTE) employees. As of April 30, 1998, the Bureau's on-board ceiling was 288 employees (Appendix H).

Through a number of creative initiatives, we have reduced our staffing levels, while still meeting the challenges of an increased workload. We have accomplished this through significant automation and deregulatory efforts that have provided enhanced service to the public. This was exemplified by our delicensing -- with the help of key legislation passed by Congress -- the recreational ship and aircraft services and the elimination of the requirement for commercial restricted permits. This decreased the number of applications filed annually by 270,000, saving licensees more than \$18.8 million in licensing fees alone (and saving the FCC the time and resources that would have been needed to process the applications). The Bureau has also implemented major improvements in the automation of its licensing activities, beginning with the introduction of electronic application filing in 1996. Our work has progressed for the planned implementation of the Universal Licensing System (ULS) later this year. Under ULS, ten separate licensing systems will be combined and applicants will be able to file via the Internet (Appendix E).

The Bureau also utilizes private sector contractor support wherever possible, to gain more efficiency and cost-effectiveness. Finally, to address the intermittent workloads created by the auctions process, the Bureau is utilizing temporary appointment personnel to perform functions that cannot be contracted out (Appendix I).

### **Efficiency and Productivity**

The Bureau is proud of our efficiency and productivity record. Many of the wireless initiatives undertaken by the Commission or the Bureau on delegated authority will have a long-term impact on wireless telecommunications and on the public. These actions include issuing rulemakings on telecommunications accessibility for persons with disabilities, streamlining auction rules, implementing enhanced 911 capabilities for commercial wireless service, approval of several major telecommunications mergers, improving the efficiency of spectrum use by private systems, and establishing the ULS.

### **Licensing and Outreach**

One of the Bureau's most significant "customer services" is its licensing activities. From December 1994 to the present, we have significantly reduced our applications backlog *and* reduced our processing time. And under the ULS, we will offer better performance, faster turn-around, and improved public access to Bureau licensing data than is available now.

The Bureau understands the importance of providing accurate and up-to date information to the public. In 1996, we established a Bureau Web Site, which provides a wide range of information about the Bureau, the services it oversees, and its activities. Interest in this site has grown significantly. For example, for the month of March 1998, we received over 1.7 million hits (Appendix K) from around the nation and across the world. We have also encouraged feedback from the Web Site users about its ease of operation, the usefulness of the information, its accessibility to persons with disabilities, and suggestions for future enhancements. Overall, the comments we have received from our users have been laudatory.

### **Streamlining**

Although we are very proud of our accomplishments in providing top quality service to our customers and constantly improving the efficiency of our operations, we know there is still more we can do. As part of both the agency-wide Biennial Review of regulations and our own streamlining initiatives, we are looking for additional ways to reduce unnecessary regulation of

wireless services, or to streamline regulations so they are less burdensome. During FY 98, we will be undertaking eight different initiatives to streamline regulations on issues such as simplifying assignments of licenses and transfers of control, furthering privatization of amateur radio services, and eliminating or streamlining technical and operational rules governing cellular, Specialized Mobile Radio (SMR), and other Commercial Mobile Radio Services (CMRS). We recognize that our rules have developed on a piecemeal basis. But as time has passed and as the marketplace has become more competitive, we can now take a more deregulatory approach to the services we regulate. Now we are trying to take a step back and make sure that our rules are streamlined and are consistent among "like" services. Unnecessary regulations should be eliminated. To implement the state-of-the art, automated ULS, for example, we are examining hundreds of licensing rules with an eye toward streamlining and making them consistent across all of our services.

## **II. Major Bureau Policy Efforts**

### **Wireless Competition**

One of the Bureau's primary goals is to facilitate competition in telecommunications. The Telecommunications Act of 1996 is built upon the foundation that increased competition will bring lower prices and greater service offerings. In the wireless industry, we have already begun to see the benefits of competition (Appendices A-D). Many reports show that prices are falling and that the reductions are significant (Appendix A, note 4). A major reason why prices are falling is the allocation of spectrum to PCS and the subsequent assignment of this spectrum via auction. This is a great public policy success story. The government provided for new entry into the mobile telephony market in the hopes that competition would increase, and that is exactly what is happening. PCS firms have begun operations all over the U.S. -- entry is a reality and continues to occur. As a result, competition has increased, with consumer benefits such as

falling prices, innovative service offerings, better diversity of service offerings and broader choice in pricing plans. The mobile telephony industry is a very young one, and technological change continues to unfold at a great rate. Some portion of the price reductions we have observed also are due to the maturing of this marketplace and the technical innovations that the industry has worked hard to achieve.

We feel that the Commission's policies, including our auctions policy, for example, have facilitated the vibrant competition in the wireless telecommunications marketplace today. In recent years, we have broadened our focus to explore opportunities to facilitate wireless competition with wireline carriers. We believe that wireless technologies are uniquely positioned to become full scale competitors to the wireline network. We are committed to fostering competition in the telecommunications marketplace, including the local telecommunications marketplace, by reducing regulatory barriers to the greatest extent possible. In all our endeavors we ask three questions: Will our actions help facilitate competition within the wireless marketplace? Will our actions facilitate wireless competition with wireline entities? And, perhaps most importantly, are our actions serving the public interest?

### **Auctions**

One of the Bureau's important initiatives is conducting spectrum auctions. In the Balanced Budget Act of 1997, Congress made clear its support for this program by extending our auctions authority until the year 2007. The Commission is committed to following Congress' mandate to use competitive bidding as a mechanism for efficient spectrum distribution and management. At the same time, we are preparing to provide Congress with an itemized statement of auction expenditures in order to comply with the reporting requirements contained in the Balanced Budget Act. We see these provisions as an opportunity to develop an ongoing dialogue with Congress in order to jointly review the accomplishments of the auctions program.

Four years of FCC auctions has yielded a process that is a model throughout the world. From

the former Soviet Union to South America, the FCC's work in the auctions area has been reviewed, admired and imitated. This past year, the Smithsonian Institute awarded the FCC the "1997 Computer World Smithsonian Award" in recognition of the auction system's cutting edge contribution to the technology revolution. On May 4, 1998, the International Sybase User Group presented its "1998 Award of Outstanding Achievement" to the FCC. This award recognizes the Automated Auction System as the best Sybase computer application of the year. The overall results of the spectrum auction program likewise have been impressive. In only four years, we have awarded 5,746 licenses to auction winners. For a fraction of the billions that have been collected, the FCC has financed the start-up and operational costs of the program with the remainder going to alleviate the federal budget deficit. The spectrum auction program is a success story -- one that combines the best attributes of economic efficiency with the ideals of public service (Appendices M-O).

Most importantly, the auctions process is a program of inclusion, not exclusion. Auctions have created opportunities for new entrepreneurs by our utilization of a system of bidding credits to meet the twin goals of diversification and small business enhancement. We recognize the importance of our mission, which includes: promoting economic opportunity and competition; avoiding excessive concentration of licenses; and disseminating licenses among a wide variety of applicants. Significantly, the overwhelming majority of winning bidders have been small businesses (Appendix N). Auctions also have encouraged service to underserved areas and enabled rural telephone companies to participate in the competitive bidding process.

The auction program is poised to handle new challenges. For example, the Bureau is working hard to implement combinatorial bidding -- an untested bidding design that may facilitate more efficient aggregation of licenses in our auctions. Our past experience will guide us as we prepare to handle new auctions. The Commission will conduct auctions for a wide range of wireless services in the coming years. Many of these services are heavily encumbered with existing users

and will present real challenges for the Bureau.

**C Block and Bankruptcy**The experience of the Bureau has taught us that there are still some legal challenges to making our auctions program as effective and efficient as possible. These legal challenges concern the commercial transactions that encompass our auctions, and that have put the Commission in the posture of being both a banker and a regulator. The Commission expended considerable effort to address the issues raised by C block licensees, which will be able to seek relief under the Commission's recent decisions. However, two C block licensees -- Pocket and GWI -- have already filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code.

The FCC and the Department of Justice (DOJ, our counsel) have conscientiously tried to resolve these bankruptcies. In the case of Pocket, a proposed agreement by several of the non-FCC creditors is now being considered. That agreement, which must be formally agreed to by DOJ, and ultimately approved by the bankruptcy court, would require that the Pocket estate return a portion of the Pocket licenses to the FCC for reauction. The agreement also establishes the repayment of a portion of the original FCC debt for the remainder of the Pocket licenses, to be acquired by another C block-eligible entity and creditors of the estate. Alternative proposals that are *higher or better* offers are being sought by the FCC. Notwithstanding our efforts, we are advised that resolution of the Pocket bankruptcy is not likely before Fall 1998 (Pocket filed for bankruptcy over one year ago).

GWI filed for bankruptcy shortly after the FCC issued the first of two Orders that offered restructuring options for C block licensees. GWI has aggressively pursued legal theories that were never intended to apply to the auction of FCC licenses, or to affect the FCC's ability to control its licenses. Notwithstanding efforts to enforce the FCC's rights, the federal bankruptcy court in Dallas, Texas recently rendered a decision that adversely affects the government's interest in those licenses and undermines our ability to collect the amounts bid for such licenses



at auction.

The bankruptcy court held in GWI that the proper date to value C block licenses is at the time of license grant -- not at the time the auction closed. This means that a licensee may use the Bankruptcy Code to revalue the bid price after the FCC's auction process has been completed. In avoiding nearly 90 percent of the auction bid amount for the GWI licenses, the bankruptcy court refused to recognize the Commission's special role as a regulator over the licenses. Significantly, the bankruptcy court made its own independent evaluation of the Congressional goals under Section 309(j) of the Communications Act, instead of relying on the Commission's C block Orders interpreting those statutory provisions. We have urged the Department of Justice to appeal this decision, and it recently announced that it plans to do so. The Pocket and GWI bankruptcies have forced the Commission to litigate or negotiate issues relating to the value of FCC licenses won by entities through the auctions process. The bankruptcy process has severely jeopardized the ability of the FCC to exercise its sole discretion over the dissemination and use of such licenses for the public benefit. We believe that the FCC will eventually succeed in these cases to protect the interests of the American taxpayer. Success will not come quickly, however, but only after further judicial review and litigation delays. In the meantime, there is a cost that will be shouldered by the American taxpayer and members of the public -- who otherwise would benefit from competition in the markets covered by the licenses tied up in bankruptcy. It is equally costly to the FCC, which can ill-afford to expend limited resources to don a creditor's hat at the expense of our regulatory role.

Therefore, it is imperative that Congress act to protect spectrum licenses from being held captive by bankruptcy delays. Bankruptcies cost the agency precious time and money. Also, the Communications Act's laudable goal of increasing competition in telecommunications is being, and will continue to be, undone by bankruptcy court's involvement in this area.

### **Regulatory Parity, Streamlining and Forbearance**

This year, we will undertake a comprehensive look at our rules under different analytical frameworks: regulatory symmetry, streamlining and forbearance. We undertake these examinations to make sure that our regulations are the least burdensome possible to protect the public interest. In each of these cases, we act consistent with Congressional directives. In examining our regulations to ensure that they facilitate regulatory symmetry, we want to ensure that to the greatest extent possible we have treated competitors similarly, consistent with Section 332. Likewise, we are examining streamlining and forbearance opportunities in light of the Congressional direction set forth in Sections 10 and 11 of the Act.

The Commission already has granted forbearance under the Section 10 provisions for certain wireless carrier pro forma transactions. A forbearance petition recently filed by a wireless industry association currently is also under consideration. The Commission is actively encouraging industry and other interested parties to present us with other opportunities for forbearance.

### **Common Carrier Issues**

A large number of wireless licensees are affected by Title II of the Telecommunications Act and implementation of the 1996 Act. We have worked, and will continue to work, on these issues on our own and in close coordination with the Common Carrier Bureau. Some of these common carrier proceedings include interconnection, numbering administration, number portability, universal service, Customer Proprietary Network Information (CPNI), rate integration, Calling Party Pays (CPP) and the Communications Assistance for Law Enforcement Act (CALEA). In these proceedings, we work to ensure that our rules are technology neutral, so that they do not favor any technology over another, and we strive to make sure that our rules properly take into account differences between wireline and wireless technologies.

We are currently examining our wireless number portability requirements more closely. We have

received two petitions on this matter: one asking for a nine-month extension of the Commission's deadline for wireless number portability and one for forbearance. The analysis we are undertaking in this matter shows the broad context in which we are examining the competitive effects of our actions: how would delay or forbearance affect competition among wireless carriers? Would delay or forbearance favor any class of wireless competitors over any other class? We are also looking at whether imposition of number portability on wireless carriers is necessary to facilitate wireless competition with wireline carriers in the local telecommunications marketplace. Finally, we need to examine how number portability may affect initiatives on numbering issues, including number exhaust, by federal, state or North American Numbering Plan decision makers. As our examination goes forward, our ultimate goal is to ensure that our rules do not impose any regulatory burden on carriers that is unnecessary in light of the public interest.

Another key challenge faced by the industry is its need to build out infrastructure and to deal with state and local policies on facilities siting, rights of way and taxation. The Bureau has been working closely with the industry, especially through trade associations, to help them establish a more productive relationship with the states and local governments than in the past. We have been particularly active in using the Local and State Government Advisory Committee as a forum for industry to meet with local, state and tribal representatives. Our message to the wireless industry has been that they should work closely with the state and local governments on issues such as facilities siting, rights of way and taxation. We have encouraged the parties to try to reach consensus before asking the FCC to step in -- because preemption should be a tool of last resort. We have also encouraged carriers who have been successful in their dealings with these issues to share their knowledge and techniques with others who are experiencing difficulties. In many cases that have been brought before the Bureau, we have had success in encouraging the industry and the state or local government to work out their differences.

## Section 255

The Bureau has drafted rules to implement Section 255 of the 1996 Act, which provides that telecommunications service providers and equipment manufacturers must make their services and equipment accessible to people with disabilities, to the extent that it is readily achievable to do so. On April 2, the Commission adopted a *Notice of Proposed Rulemaking* to implement Section 255. The Commission plans to issue final rules as soon as possible after the close of our comment cycle in August.

In Section 255, Congress gave responsibilities both to the Commission and the Architectural and Transportation Barrier Compliance Board (Access Board), an independent federal agency whose primary mission is promoting accessibility for persons with disabilities. The Access Board, in conjunction with the Commission, was responsible for developing guidelines for equipment accessibility. The Commission is responsible for the overall implementation and enforcement of access requirements for both telecommunications services and equipment.

We have been working closely with the Access Board since the passage of the Act. The *NPRM* proposes to adopt key substantive requirements of the Access Board's guidelines, which were released in February 1998. It also draws extensively from comments the Commission received in response to its *Notice of Inquiry*, issued in September 1996. We have had numerous outreach meetings with consumers, service providers, and equipment manufacturers as well.

Under the proposed rules, companies will be given a great deal of flexibility concerning how they carry out the mandate. They are responsible for ensuring that their products are accessible to persons with the full range of disabilities recognized under the Americans With Disabilities Act, to the extent that it is readily achievable to do so, but the Commission does not propose to prescribe detailed implementation rules that companies must follow.

For companies that need guidance on how to make their products accessible, the Commission does propose processes that it would expect companies to undertake to meet their obligations

under Section 255. Specifically, we state what demonstrations by the company that we would look favorably upon in the context of a complaint. Under the proposal, we would expect companies to have processes in place that ensure the consideration of accessibility issues at the beginning of the design and development process and on an ongoing basis. These would be internal processes as well as outreach efforts to disabilities groups. We would also expect companies to assess whether it is readily achievable to make their products accessible to the full range of disabilities, and if not, why not.

The Commission believes that by having incentives in place for companies to consider accessibility issues early and on an ongoing basis, it can significantly reduce the number of complaints that it will receive. But once we do get a complaint, we will treat it with the highest priority. The *NPRM* proposes adoption of a "fast track" process for Section 255 complaints. The Commission believes that the fast-track approach will resolve many accessibility problems informally, providing consumers rapid relief and enabling manufacturers and service providers to apply their resources to solving access problems rather than subjecting them to burdensome procedural requirements. The Commission proposes that more traditional enforcement processes will be used in cases where companies do not comply with Section 255.

Implementation of Section 255 is a high priority for the Commission and the Bureau. The Chairman has pledged to commit the resources, staff, and training to give meaning to your mandate -- and to ensure that no American is left behind in the telecommunications revolution.

### **Public Safety Issues**

Over the past decade, the Commission has been engaged in a sustained effort to carefully assess and provide for the spectrum-based communications needs of the police, fire, emergency medical and other service providers that comprise the state and local public safety community. The Wireless Telecommunications Bureau has focused its efforts at a number of levels to ensure that the public safety community has adequate spectrum-based resources to meet the public safety

needs of the American people.

A recent reorganization of the Bureau resulted in redesignating the former Private Wireless Division as the Public Safety and Private Wireless Division. The Bureau now has a Deputy Division Chief for Public Safety, who is in charge of coordinating all of the Bureau's public safety initiatives and who serves as a liaison to the Commission and the public on public safety initiatives. Additional staff has also been dedicated to working on public safety matters as the Bureau gears up to implement key provisions of the Balanced Budget Act of 1997, including the statutory deadline for commencement of assignment of the newly-allocated public safety spectrum in former TV channels 60-69 provided for in the Balanced Budget Act of 1997.

A critical issue to the public safety community is interoperability. The Commission has undertaken to address the interoperability problem in the Docket 96-86 public safety rule making. New spectrum designated for interoperability will allow users of different public safety bands to talk to each other using common frequencies. In addition, the Commission has tentatively concluded that deployment of systems shared by different agencies in a city, county, region or state should be facilitated and that technology developments and standards that lead to interoperable equipment should be encouraged. Use of commercial systems may play a role in facilitating interoperability and the Commission has noted that partnerships between public safety, private, and commercial systems should be explored.

Although the public safety community has indicated that funding challenges present a significant obstacle to meeting their public safety objectives, the FCC has no jurisdiction over local funding for public safety. However, some options have been proposed, including setting aside auction revenues or creating a national public safety group to address and distribute public safety funding. The Bureau and Commission will explore these proposals in the public safety rule making proceeding. In addition, the Commission has noted that the market for public safety equipment is highly concentrated, and prices are often high, and will work to promote a more competitive market.

The Commission also has increased its outreach efforts with the public safety community and with the various federal agencies having public safety responsibilities. Along with National Telecommunications and Information Administration (NTIA), in 1995 the Commission established and supported the Public Safety Wireless Advisory Committee (PSWAC), which brought together representatives from all sectors of the public safety community in order to

identify and articulate the future spectrum-related needs of the public safety community. Many of the activities begun by PSWAC are being carried on by the National Public Safety Telecommunications Council (NPSTC), an organization comprised of various state and local public safety organizations, on which Commission staff serve as observers. Also, last Fall, at the suggestion of PSWAC, the Commission and NTIA jointly established a Public Safety Joint Working Group to coordinate the development of national public safety spectrum management and regulatory policies.

### **Enhanced 911**

The Commission believes that assuring prompt delivery of emergency 911 calls, without delay, promotes safety of life and property. The Commission has therefore adopted rules to require wireless carriers to transmit 911 calls and has established deadlines for carriers to also provide enhanced 911 (E911) services, including locating wireless telephone users dialling 911. In June 1996, the Commission adopted rules to govern the availability of basic 911 services and the implementation of E911 for certain wireless services. On reconsideration, the Commission modified its rules: (1) to require "covered" wireless carriers to transmit all wireless 911 calls without interrupting transmission to validate that the caller is a subscribing customer; and (2) to temporarily suspended enforcement of the requirement that wireless carriers provide 911 access to customers using TTY devices until October 1, 1998, but only for digital systems. As of April 1, 1998, covered carriers must provide Automatic Number Identification (ANI) and cell site information for 911 calls to the public safety answering point (PSAP) so long as: (1) the carrier has received a request from a PSAP to provide these services; the PSAP is capable of receiving the data elements; and a funding mechanism is in place to cover facility costs related to the provision of these enhancements. Effective October 1, 2001, covered carriers will be required to identify the location of mobile units making 911 calls within a radius of no more than 125 meters. In further stages of its E911 proceeding, the Commission is considering a proposal that mobile handsets be equipped to select and use the channel with the strongest cellular signal whenever a 911 call is placed. In addition, the Commission is monitoring the development of wireless E911 to resolve implementation problems as they arise and to ensure that consumers will receive the benefits of E911 deployment.

**Private Wireless Issues** The Commission continues to examine ways to address the communications needs of the private land mobile radio (PLMR) community. The PLMR services are designed to meet the internal communications needs of private companies, state and local governments, and other organizations. Over the last decade, the Commission has made significant strides in identifying and examining issues of importance to the PLMR community. For example, in 1991, the Commission initiated its "Refarming" proceeding to explore options to promote more effective and efficient use of the bands below 800 MHz by PLMR licensees. Although the immediate problem the Commission sought to address was frequency congestion, the Commission's broader objective was to develop a regulatory strategy that promotes more efficient use of the existing spectrum allocations to satisfy future PLMR telecommunications requirements. In the context of this proceeding, the Commission established a new channel plan for the PLMR spectrum below 800 MHz to promote more efficient use of the spectrum. In addition, the Commission consolidated 22 PLMR services into two broad service pools in an effort to promote efficient distribution of the additional channels created under the new plan, as well as the remaining available PLMR spectrum below 800 MHz. The Commission has attempted to think creatively about how best to respond to the varied, sometimes competing, needs of the diverse PLMR community. We have looked at ways: (1) to relieve unnecessary regulatory burdens and provide greater operational flexibility; and (2) to accommodate provision of "niche" services, such as the creation of the Family Radio and Low Power Radio Services. While the Commission has made significant progress regarding PLMR spectrum issues in the past, we are mindful that the Balanced Budget Act of 1997 has affected the PLMR regulatory



landscape. For example, Congress amended Section 309(j) of the Communications Act to establish a new approach to the auctionability of spectrum. Section 309(j)(2) formerly stated that spectrum was auctionable if the principal use of the spectrum was for subscription services and an auction would promote certain statutory objectives. In contrast, newly-amended Section 309(j)(2) authorizes the Commission to use competitive bidding for all mutually exclusive applications, except for certain public safety radio services. While the Commission has addressed this expanded auction authority in certain service-specific rule makings, it plans to undertake a more comprehensive rule making proceeding designed to implement the Balanced Budget Act of 1997.

In addition, the 1997 Balanced Budget Act Conference Report contained a directive for the Commission to consider the needs of the PLMR community for additional spectrum for shared or exclusive use. Recently, the Commission sought comment on a petition for rule making submitted by the Land Mobile Communications Council (LMCC) requesting the allocation of additional spectrum for use by the PLMR community and the promotion of the sharing of federal government spectrum with PLMR services. The Bureau will carefully examine the issues raised in this petition as it continues to explore the spectrum and policy interests of the private wireless community.

### **III. Legislative Proposals**

#### **Bankruptcy Legislation**

As indicated previously, bankruptcy legislation is urgently needed to ensure that the goals of Section 309(j) are met, and that our auctions/licensing process is not completely undermined by the bankruptcy courts. Congress undoubtedly never intended to allow licensees to use the bankruptcy courts as a haven to hoard valuable FCC licenses. Therefore, to assist the Commission in rapidly reassigning spectrum licenses to parties that will put them to the most efficient use, the Commission strongly urges Congress to adopt legislation that would clarify that provisions of the bankruptcy code (1) are not applicable to any FCC license for which a payment obligation is owed; (2) do not relieve any licensee from payment obligations; and (3) do not affect the Commission's authority to revoke, cancel, transfer or assign such licenses.

#### **Management of Banking Responsibilities**

Explicit statutory authority is needed to enable the FCC to manage its installment payment portfolio in a flexible manner comparable to other government agencies that lend funds to regulated entities. The installment payment program implemented pursuant to Section 309(j)(4)(A) places the Commission in conflicting roles as both "lender" and "regulator," presumably subject to the Federal Claims Collections Standards (FCCS). Under these provisions, it is not clear whether the Commission may compromise, modify, settle, or waive claims for license payment in whole or in part, privatize auction debt, or transfer the banking functions to another agency or entity. Government agencies that perform similar "lending" functions to regulated entities, such as the Department of Agriculture and the Small Business Administration, have explicit statutory authority to flexibly service their payment programs outside the purview of the FCCS, and we suggest that comparable provisions be added to Section 309(j)(8). Even if the FCC never offers any future installment payments, this legislation would be helpful to management of the existing loan portfolio that includes at least six different wireless services.

#### **Contract With America Advancement Act**

We recommend that Congress exempt all auction rulemakings from the regulatory requirements of the Contract With America Advancement Act (CWAAA). The CWAAA amended the Administrative Procedures Act to include certain requirements that create difficulties in timely auction deployment, and provide parties a means of frivolously disrupting the timing of specific auctions. Auctions are highly time sensitive and the Bureau wants to get the timing right based on the input it receives from potential bidders. Unfortunately, these requirements can add at least of two months of costly delay that can frustrate the efforts of the Bureau and bidders as we prepare to go to auction.

#### **Contracting Flexibility**

Congress should exempt auction contracts from certain provisions of the Federal Acquisitions Regulations (FAR) in order facilitate more efficient use of contract services.

Given the objective of Section 309(j)(3)(A) to ensure rapid deployment of service to the public through the auction program, the FCC often finds itself understaffed for operations during any given auction, particularly since the need for extra staffing varies with the auction schedule.

Some flexibility in hiring and retaining contractors under the FAR would greatly increase the efficiency of the auctions program. For example, the FAR prohibits the Commission from entering into so-called "personal services contracts," unless otherwise specifically authorized by statute to do so. The purpose of this regulation is to avoid the use of contract personnel in a manner that undermines government personnel caps. Unfortunately, this regulation results in layers of supervisory "red tape" that are often inefficient, considering the tight deadlines associated with the auction process. Some government agencies such as the Federal Aviation Administration are authorized to implement an acquisition management system that addresses the unique needs of that agency, notwithstanding the provisions of Federal acquisition law such as the FAR (*See, e.g.*, Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 104-50, § 348, 109 Stat. 436 (1995)). Granting the FCC this same flexibility would greatly benefit the efficiency of the auctions program.

#### **Statute of Limitations for Forfeitures**

The statute of limitations for forfeiture proceedings against non-broadcast licensees should be modified from one to three years. The Communications Act gives the Commission broad authority to impose monetary forfeitures of up to one million dollars upon non-broadcast licensees for willful or repeated violations of the Act or a Commission rule or order. Specifically, the Commission must initiate a proceeding for the imposition of a forfeiture penalty by a written "Notice of Apparent Liability for Forfeiture" (NALF) within one year from the date the act or omission that forms the basis of the alleged violation occurs. Forfeiture actions outside the one year statute of limitations are expressly prohibited. This statute of limitations with regard to non-broadcast licensees can hamper the Commission's ability to preserve the integrity of the auctions process, or to effectively enforce the Communications Act and its implementing regulations, and in many instances, if a forfeiture cannot be imposed, the Commission does not have an appropriate remedy for violations of the Communications Act or the Commission's rules. For example, Section 1.2105(c) of the Commission's rules prohibits collusion between auction bidders. When such collusion consists of private communications between bidders, it is difficult for the Commission or for other bidders to learn of the collusion. Once the collusive conduct is revealed, the Commission must investigate the matter and prepare and release a NALF within one year after the collusion act occurs. Because of delays inherent in this process, which may also include further correspondence with the alleged colluders, FCC staff often find that the one-year statute of limitations for issuing a NALF has elapsed before it can make a final decision as to whether and to what extent enforcement action is warranted.

#### **Conclusion**

The wireless communications area is a dynamic and ever-changing environment. The Wireless Telecommunications Bureau has sought to manage our resources and establish our policies and priorities in a way that reflects and complements this environment and fosters its development and future growth. I look forward to answering any questions you may have on the Bureau's efforts. Thank you.